

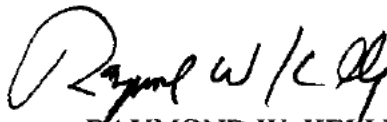


POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Louann Elias : ORDER
Tax Registry No. 932031 : OF
73 Precinct : DISMISSAL
-----X

Police Officer Louann Elias, Tax Registry No. 932031, Shield No. 31333, Social Security No. ending [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 83509/07, 83642/08, 84002/08, 84131/08, and 84290/08, as set forth on form P.D. 468-121, dated November 27, 2007, December 26, 2007, April 18, 2008, May 19, 2008, and June 20, 2008, respectively, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Louann Elias from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: 0001 HRS. January 6, 2009



POLICE DEPARTMENT

October 7, 2008

-----X
In the Matter of the Charges and Specifications : Case Nos. 83509/07,
: 83642/08, 84002/08,
- against - : 84131/08, & 84290/08
Police Officer Louann Elias :
Tax Registry No. 932031 :
73 Precinct :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Martin G. Karopkin
Deputy Commissioner - Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department was the subject of a trial conducted on August 7, 2008 and August 14, 2008. The Respondent was charged with the following:

Disciplinary Case No. 83509/07

1. Said Police Officer Louann Elias, assigned to the 73rd Precinct, while on-duty, on or about November 20, 2007, inside the 73rd Precinct Stationhouse, in Kings County, having been directed by Lieutenant Wayne Battle, Tax #898931, to report to 1 Lefrak Plaza, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

2. Said Police Officer Louann Elias, assigned to the 73rd Precinct, while on-duty, on or about November 20, 2007, inside the 73rd Precinct Stationhouse, in Kings County, having been directed by Lieutenant Michael DiPane, Tax #899140, to report to 1 Lefrak Plaza, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

3. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about November 19, 2007, was absent without leave from her scheduled tour in that she failed to report to work and proceed to her post, sector or assignment as directed by a supervisor.

P.G. 202-21, Page 1, Paragraph 2 – POLICE OFFICER
P.G. 205-18 – ABSENT WITHOUT LEAVE

4. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about November 19, 2007, having been directed by Sergeant Oberding, 73rd Precinct, at approximately 1250 hours, to report to work immediately, and after being informed that her request for a tour change was denied, failed and neglected to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

5. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about October 16, 2007 and October 18, 2007, was absent without leave form [sic] her scheduled tour in that she failed to report to work and proceed to her post, sector or assignment as directed by a supervisor after being informed that her request for an emergency excusal day was denied.

P.G. 202-21, Page 1, Paragraph 2 – POLICE OFFICER
P.G. 205-18 – ABSENT WITHOUT LEAVE

Disciplinary Case No. 83642/08

1. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about December 20, 2007, having been directed by the 73rd Precinct Integrity Control Officer to report to the Department Advocate's Office on December 21, 2007, at 0900 hours, failed and neglected to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

2. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about December 20, 2007, having been directed by Sergeant Wong, Department Advocate's Office, to report to to [sic] the Department Advocate's Office on December 21, 2007, at 0900 hours, and after acknowledging said lawful order by signing a written notification to that effect, failed and neglected to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 84002/08

1. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about March 14, 2008, having been directed by Deputy Inspector Jeffrey Maddrey to report to the Department Advocate's Office on March 17, 2008 at 0900 hours, failed and neglected to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 84131/08

1. Said Police Officer Louann Elias, assigned to the 73rd Precinct, on or about May 9, 2008, having been directed by competent authority to report to the Department Advocate's Office on May 15, 2008 at 0900 hours, failed and neglected to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 84290/08

1. Said Police Officer Louann Elias, assigned to the 73rd Precinct, having been directed by competent authority to report to the Department Advocate's Office on June 12, 2008 at 0900 hours, failed and neglected to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of all Specifications charged herein.

Introduction: Determination to conduct a disciplinary trial in the Respondent's absence

The Respondent failed to appear for trial on August 7, 2008 and August 14, 2008. The Department offered evidence that she had been personally served with a notice to appear on August 7, 2008 by both Sergeant Oliver Smith on June 30, 2008 and Sergeant Frank Galasso on July 24, 2008. A written notice of service signed by the Respondent was also offered into evidence as Department's Exhibit (DX) 1.

The Respondent had previously failed to appear at court appearances on May 15, 2008, June 12, 2008 and June 26, 2008.

With regard to the August 14, 2008 court date the Department offered evidence that the Respondent had been served with notice to appear by regular mail, by registered mail and by affixing a notice to her door.

This Court finds that there is no alternative but to proceed in the Respondent's absence.

As to her representation by legal counsel, on May 15, 2008, John Tynan, Esq. of the firm Worth, Longworth and London, LLP indicated that he no longer represented her.

On June 12, 2008, Craig Hayes, Esq. of the same firm again indicated that the firm no longer represented her.

No attorney has appeared on her behalf. Consequently, the Court finds that there is no alternative but to proceed without the Respondent having representation.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Oliver Smith, Sergeant Frank Galasso, Deputy Inspector Jeffrey Maddrey, Sergeant Christopher Oberding, Lieutenant Michael DiPane, Sergeant Matthew Wong, Police Officer Danny Whitty, Police Officer Stephen Suo, Detective Radames Padilla and Agency Attorney Eman Ahmed, Esq.

Sergeant Oliver Smith

Smith is a member of the Brooklyn North Investigations Unit. He agreed that on June 30, 2008, he went out to notify the Respondent about the August 7, 2008 trial date. He stated that he observed her in the street about two houses north of her residence. He stated that he furnished her with the notification which "stated that she was to appear at the Deputy Commissioner of Trials on this date, today's date."

Smith said he asked the Respondent her name just so he could identify her and she identified herself as the Respondent. He said he asked her where she worked and preliminary questions and introduced himself and gave her the notification, which she acknowledged and placed in her back left pocket.

On questioning from the Court, Smith said he made contact with the Respondent on the block where her house is located, which he believed was [REDACTED]. He denied that he knew her before and said he identified her from Department photos and pedigree information. He agreed that he asked the Respondent where she worked and stated: "She actually didn't answer specifically and say where she worked. She was a little iffy in reference to whether or not she was still employed. Any other specifics, I really don't recall the specifics." He agreed that she did acknowledge that she was at least formally a police officer.

Smith also testified that on May 9, 2008, he had contact with the Respondent. Specifically, it was for the purpose of notifying her to appear at the Department Advocate's Office on May 15, 2008. He indicated that like the June 30 encounter, this too was in the street and that he positively identified the Respondent via a Department photograph. Smith stated that he had approached the Respondent as she was exiting her residence. He explained that there was some small talk, and that "she received the notification, she actually took the notification." He indicated that in addition to handing her the paper notification, he verbally expressed that she was required to appear on the May 15 date. Smith said that the Respondent "nodded her head."

The Respondent failed to appear on May 15. Upon questioning by the Court, Smith indicated that he receives notifications and reports and that he was in contact with the Deputy Commissioner of Trials office regarding the matter. He was also informed by his supervisor, Lieutenant LeBron, that the Respondent had failed to appear.

Smith further testified that on May 16, 2008, he had contact with the Respondent. Upon her exit from her residence, he approached her on the street and furnished her with

a notification to appear at the Department Advocate's Office on June 12, 2008. He indicated that she accepted the notification, and nodded her head before continuing to walk down the street. Smith was subsequently informed via his supervisor and the Deputy Commissioner of Trials office that the Respondent failed to appear on June 12, 2008. Upon inquiry by the Court, Smith did not recall who he spoke with during his communication with the Deputy Commissioner of Trials office.

Sergeant Frank Galasso

Galasso is assigned to the Department Advocate's Office. On July 24, 2008, he went to the Respondent's residence to serve her with a notification to appear for trial on August 7, 2008. He indicated that this notification was in the form of a letter, DX 1, and agreed that the Respondent acknowledged receipt of this letter by signing her name at the bottom, along with the date and time.

Galasso indicated that he identified the Respondent by means of a photograph and by asking her if she was the Respondent, to which she replied that she was. In examining DX 1, Galasso recognized the document to be the original letter that he brought to the Respondent's house notifying her to appear on August 7, 2008. He assented that at the bottom of the document was the Respondent's signature along with the time and date, and that this constituted the actual acknowledgement of the Respondent.

Upon questioning by the Court, Galasso agreed that the Respondent signed the document in his presence. He also stipulated that he has been present on the fourth floor of the morning of this hearing, August 7, 2008, and indicated that the Respondent had not appeared. He said that when he served the Respondent with the document on July 24,

2008 two of his police officers accompanied him but he indicated that Sergeant Smith was not present.

Deputy Inspector Jeffrey Maddrey

Maddrey is the Commanding Officer of the 73 Precinct, where he has been assigned since January 1, 2006. He said he has known the Respondent since May of 2006.

He testified that on October 16, 2007 and October 18, 2007, the Respondent telephoned the 73 Precinct requesting emergency excusals from duty. These requests were subsequently denied and the Respondent was directed to report to work. Maddrey stated, "She didn't come to work anyway. She refused to come to work after being instructed by supervisory personnel from the 73rd Precinct to show up for work....she just didn't show up."

Maddrey agreed that at a later time the Respondent offered an explanation as to why she did not appear for duty, saying: "She said she had to do some personal business regarding a lawsuit against the Police Department and she had to take care of that." He agreed that this was the excuse for her failure to appear on both October 16, 2007 and October 18, 2007.

Maddrey indicated that, on March 14, 2008, he notified the Respondent to appear at the Department Advocate's Office on March 17, 2008. He indicated that at about 6:00 pm on March 14, he was present at her residence and that he knocked on her rear door, whereupon she came to the door and he stated, "...Louann, this is going on long enough. You know the Advocate wants you to come in. You are ordered to come to the Department Advocate." The Respondent then expressed her interest in continuing the

conversation at the front door, where Maddrey proceeded to walk around to. He testified that it was here that he repeated the order for her to report to the Department Advocate. He stated: "She told me okay. She said, okay, she will go." Maddrey did not give her a formal written notification to appear on March 17, 2008, but he had no question in his mind that she understood what he was talking about.

Maddrey testified that on Monday, the day that he had ordered her to report to the Department Advocate's Office, he received a telephone call in his office from the Respondent. He indicated that the Respondent stated, "No, I don't think I am going to go, I am not going to go." Maddrey again informed the Respondent that she needed to report to the Department Advocate's Office and she eventually agreed she would go. Maddrey stated that, despite agreeing to appear, she failed to do so. He explained that he determined that the Respondent had failed to appear because he had been in contact with the Advocate's office.

Maddrey indicated that, after March 17, 2008, he did not have any subsequent contact with the Respondent regarding her failure to show up.

Sergeant Christopher Oberding

Oberding has been assigned to the 73 Precinct for approximately three years and is assigned as the training sergeant. He said that on November 19, 2007, he was assigned as the desk officer at the 73 Precinct. He said that at approximately 7:45 a.m. on that date, he received a telephone call from the Respondent who said she was going to be running late. He stated that he informed her that she was already late and "to come to work as soon as possible." He indicated that the Respondent failed to come to work.

Oberding said that at approximately 12:50 p.m. he received another phone call from the Respondent and she stated that she would like to come in for the third platoon. He said "Her scheduled tour was a regular day tour, 7:05 am by 3:40 pm... That's the second platoon." The third platoon is from 3:00 pm to 11:35 pm. Oberding subsequently denied the Respondent's request for the tour change.

Oberding agreed that the Respondent eventually did show up at "exactly 1500 hours" and that this appearance coincided with the start of the third platoon. This also coincided with the request that she had made that was subsequently denied. Oberding indicated that the Respondent denied orders issued by him on two occasions on November 19, 2007.

Lieutenant Michael DiPane

DiPane has been assigned to the 73 Precinct for three years and he has been the Integrity Control Officer there since November of 2005.

DiPane said that on November 20, 2007, the Respondent was supposed to go directly from her residence to One Police Plaza to get a new identification card and to speak to some other units because she had been placed on modified assignment the previous day. He said that she instead arrived at the 73 Precinct where he told her she needed to go to One Police Plaza. The Respondent said she was not notified and that she did not receive a written notification. He said he told her, "Well, when someone tells you something, that's as good as a written notification. You were told by a supervisor."

DiPane said that the Respondent was also told this by Lieutenant Battle, who had gone to DiPane's office and said, "I think we have a situation." DiPane said, "I spoke to

[Battle] in the privacy of another office, and then I went outside. [The Respondent] was still in front of the desk giving him a very difficult time. I said, 'Louann, you have to respond over to headquarters.'"

DiPane said that later that day, in the afternoon, the Respondent was given direction to report to the Medical Division at One Lefrak Plaza. He said he directed her "to go to Medical Division and speak to a doctor as prescribed by Early Intervention and some other units here. And she refused." He said he told her this numerous times and believed that Battle issued her that directive as well.

DiPane said that the reason the Respondent was directed to the Medical Division was because "once she spoke to Early Intervention, they were getting some signals that she might need to speak to a doctor....They told me 'She will be back on her way to the 73rd Precinct. Do not let her leave the precinct. Someone will escort her to the Medical Division. She has to speak to a Dr. Norr at One Lefrak Plaza, the Medical Division.'"

DiPane testified that the Respondent refused to comply and go to the Medical Division, stating:

She absolutely would not go. I asked her repeatedly. I said, "Louann, this is the best thing for you. Please go and take care of what you have to take care of." I kept repeating on and on. Finally, she kept refusing. I had to sit her in the Commanding Officer's office to relax a minute. I know it was a trying day for her. I told her again, please. Nothing. Finally I called Inspector Maddrey on his cell phone and told him the situation. He said "Repeat the command one more time, and if she doesn't [comply], then she will be suspended."

DiPane agreed that to his knowledge, Battle also on numerous occasions issued her the direction to go to the Medical Division, and that she had been placed on modified

assignment on the previous day in response to an incident that involved Oberding, "something about not showing up for work."

On questioning from the Court, DiPane agreed that he initially ordered her to go to One Police Plaza, on November 20, 2007 in the morning. He said: "She kept saying that she wasn't notified. I said 'You were supposed to go directly from home.' She said 'I wasn't notified.' I said 'Someone spoke to you. Didn't someone speak to you about it,' and she said 'I never received a written notification.'"

DiPane agreed that there did come a time when she went to One Police Plaza, and subsequently returned to the precinct, whereupon she was ordered to go to One Lefrak Plaza. He indicated that Battle also ordered the Respondent to go to One Lefrak Plaza in his presence. DiPane said Battle "basically said, 'Louann, you should go.' I basically was very crystal clear. I was practically pleading with her to go." When asked "You did direct her to go?" DiPane said "Absolutely."

On direct examination, DiPane agreed that, on December 20, 2007 he directed the Respondent to appear before the Department Advocate's Office the following day. He said, "I believe that she was supposed to appear at nine o'clock in the morning." He subsequently agreed it was a 9:00 am appearance time, and that he later received a telephone call from the Department Advocate's Office informing him that she had not appeared that day.

On Thursday, December 20, 2007, DiPane said he tried to call the Respondent at her residence and left a message. She called him back. He said, "She was supposed to go to the Advocate's Office on Friday. And she said to me on the phone – I said 'I am notifying you now, make sure you get a pencil, get a pen.' She said 'Hold on.' She got a

pen and paper and she started taking information. When I told her of the date, which was the following day, she told me 'I am not going to be able to go. I'm a Seven[th]-Day Adventist, and Friday is my day of worship.' I said 'You have to go, you're notified.'"

DiPane agreed that she was directed to appear on a Friday. After looking at a 2007 calendar, he said he must have spoken to her on December 20. He said he told her she had to respond to headquarters the following morning, and she told him she couldn't respond because it was a Friday. He said that he told her: "Just be there in the morning. They will make sure you get home to have your time of worship." He said that the Respondent said "no" and that she was "probably not going to be able to make it."

DiPane said that the Respondent asked him to help her with this situation, and he agreed and telephoned the Department Advocate's Office to see if the date could be rescheduled. He said that he was told "Absolutely not, she has to come in." He explained that he was told if she came in at nine o'clock in the morning, they would ensure her expeditious departure so as not to infringe on her religious practices. He believed she showed up at the Department Advocate's Office that Friday, but late in the afternoon, "sometime around 1500 hours, or even a little bit later than that."

Upon inquiry from the Court, DiPane agreed that the Respondent had raised the issue of being a Seventh-day Adventist and not being able to work on Friday before. He said this did interfere with her ability to work prior to that and that her days off were changed prior to that.

Sergeant Matthew Wong

Wong is assigned to the Department Advocate's Office where he is a supervisor for the Trial Calendar Unit and the Charges Unit.

Wong indicated that he had contact with the Respondent on December 20, 2007. Specifically, he indicated that it was on this date at about 4:00 pm when his office was attempting to serve charges on her near the fourth floor elevator bank. Wong explained that, despite some initial resistance, the Respondent eventually did sign for receipt of the charges. It was at this time that she was also notified to return to the Advocate's Office the following day, December 21, at 9:00 am for restoration to modified duty. He explained that the Respondent was supposed to arrive on December 20, 2007 at 9:00 am, and not 4:00 pm.

Wong said that the Respondent was provided with a written notification, DX 2, which directed her appearance the following morning at the Advocate's Office. He identified this document as being the notification that was furnished to the Respondent, and explained that he recognized it as such because her name was typed on it and it contained both his and the Respondent's signatures. Wong indicated that the Respondent failed to comply with this notification.

Upon questioning by the Court, Wong agreed that he served the Respondent with charges with respect to case 83509/07, the original and initial case. When asked to examine the Charges and Specifications (PD form 468-121) relating to this case, Wong then indicated that he was not present when they were served and that he did not serve these charges himself.

Wong was later questioned with respect to the Department Advocate's Office officer sign-in log, and indicated that it is normally maintained in the hallway near the fourth floor elevator banks.¹ He explained that when officers arrive either to receive

¹ The Court takes notes that this log, which is maintained by the Advocate's Office, is the same log in which Respondents sign in to indicate they are present for trial.

charges or for trial, they sign in at this log “to verify that they did come in to the Advocate’s Office.” He testified there is a notice directing officers to sign the log, and that these signs are “right above the log that’s glued onto the wall telling them to sign in the log and then see the desk inside the Department Advocate’s Office.”

He indicated that he had an opportunity to review this log with respect to March 17, 2008, May 15, 2008, and June 12, 2008. Wong indicated that on all of these dates, neither the Respondent’s name nor tax number existed in the log indicating she had signed in.

Police Officer Danny Whitty

Whitty is assigned to the Department Advocate’s Office where he works in the Litigation Support Unit and stated that part of his duties includes serving Respondents with charges and specifications.

He indicated that he had contact with the Respondent on December 20, 2007, when he served her with charges. When asked to examine DX 3, Whitty identified it as a Charges and Specifications form (PD 468-121) relative to case 83509/07. He indicated that the rear of this document contains an acknowledgement of service, and that it reflects that the Respondent was served. Specifically, it contains her signature, date and time. Whitty stated that this document also contained his signature and that he personally served these charges upon her. He agreed that the document contains a date and time stamp, indicating December 20, 2007 at 4:40 pm.

Whitty was shown and asked to examine DX 4 and identified it as the Charges and Specifications relative to case 83642/08, and said that it indicates these charges were

served upon the Respondent on February 21, 2008 at 1:10 pm. He explained that he recognized the signature on the acknowledgement of service to be the Respondent's based upon his prior service of charges to her. Whitty explained that it was Detective Radames Padilla who served these charges to the Respondent, and that he was not present but recognizes the signature of Detective Padilla from having worked with him previously and having observed his signature on prior occasions.

Police Officer Stephen Suo

Suo is assigned to the Department Advocate's Office.

He indicated that he had an opportunity to review the log book outside of the Department Advocate's Office and that the Respondent's name and tax number did not appear in the book. The Court also took judicial notice of the fact that the Respondent's name had been called and that there was no response.

Suo agreed that he prepared service packets for the Respondent with respect to case numbers 84002/08, 84131/08, and 84290/08. He explained that the packets comprised "three sets of charges and a notification to must appear to the court" along with "49 s."² When asked what he specifically did with respect to these service packets, Suo stated, "I prepared four envelopes of the three sets of charges, and in each envelope a notification was in there. Then I mailed two envelopes, one certified with a return receipt and the other one first class to her address."

Suo reiterated that each envelope that he prepared contained a must appear notification for August 14, 2008 at 9:00 am. He indicated that he mailed the aforementioned envelopes on August 7, 2008 at about 3:00 pm. He was asked to

² "UF-49"-an official Department memorandum

examine DX 7 and identified this document as a copy of the notification that he placed inside each envelope. He recognized the document as a fair and accurate representation of the notification slip that he sent to the Respondent because he performed the photocopying of it.

He affirmed that he sent the envelopes certified mail, registered, return receipt requested. When asked by the Court if he knew of the case numbers for which he served the charges, Suo indicated that he had the information downstairs in his office. Whereupon he retrieved this information he indicated that the case numbers were 84002/08, 84131/08, and 84290/08. He reaffirmed that attached to these charges were a 49 and a must appear notification.

Detective Radames Padilla

Padilla is a Detective Investigator for the Department Advocate's Office.

He indicated that there was a point where he served charges upon the Respondent, particularly, case numbers 84002/08, 84131/08, and 84290/08. He indicated that the service of these charges contained a "notification to appear, along with a detailed 49 and the charges and specifications corresponding to the 49."

Padilla testified that on August 11, 2008, he was present at the Respondent's residence to serve the charges pertaining to the above referenced cases. Further to knocking on her door, there was no answer. He explained that he "affixed a copy of everything that I described to you to her door." He indicated that he also went to the 73 Precinct and served the relevant paperwork there to the desk officer, Sergeant Kitching. Padilla examined DX 7, identifying this document to be the official notification to appear for trial on August 14, 2008, at 9:00 am.

Agency Attorney Eman Ahmed, Esq.

Eman Ahmed, Esq. is an attorney employed by the Department and is assigned to the Office of Equal Employment Opportunity (OEEO). She has worked in that command for almost two years, and her duties include handling “reasonable accommodation and disability cases.”

Ahmed explained that the terminology “reasonable accommodations” relates to “employees who have either disability or religious — need an accommodation for either disability or religious reasons, apply for an accommodation, and as long as they are able to do the essential functions of their job, we assist them with the accommodations.”

Ahmed indicated that she is familiar with the Respondent as she queried the relevant information “on the database.” She indicated that the Respondent does have a reasonable accommodation on file with the Department as being a Sabbath observer with respect to the Seventh-day Adventist religion. Ahmed explained that the Sabbath for the Respondent is “from sundown on Friday to sundown on Saturday, they are required to do certain prayers within their home. They have certain restrictions as far as travel and certain activities, and it’s usually a time just for prayer and observance.” When asked, “So up until that point on Friday, sundown on Friday, [the Respondent] can be present for a particular duty related to the NYPD?” Ahmed responded, “Yes.” She indicated that the Respondent had filed a request for this accommodation, and it was subsequently granted.

Ahmed was asked to examine DX 8. She identified this document as a letter dated March 1, 2007, being addressed to “Ms. Louann Thomson,”³ the Respondent. The letter indicated that her application for accommodation was granted and that the matter was closed. Ahmed stated that the document was a copy of the original letter which she

³ Respondent’s former name.

had examined and photocopied from the file maintained by the Department. The Court took notice of the contents of the document:

This office has received your request for reasonable accommodation based on your religion. You requested to have the Sabbath off sundown Friday through sundown Saturday because you are a Seven Day Adventist. The request has been approved. The matter is deemed closed.

Ahmed stated that a copy of this letter had been provided to the Respondent's commanding officer along with another letter, which was marked as DX 9. She indicated that DX 9 was a form letter that is normally sent to the commanding officer, dated March 1, 2007, and addressed to the commanding officer of the 73 Precinct. Ahmed stated that this letter is kept in the official course of business of this Department and that it was a part of Department business to keep this record. She stated that she retrieved this document from the file and that it was a copy that she had made. She agreed that it was a fair and accurate representation of the original that is in the file.

With respect to the Respondent's notification to appear at the Department Advocate's Office on Friday, December 21, 2007, at 9:00 am, Ahmed stated that the Department was not in violation of the Respondent's reasonable accommodation.

FINDINGS AND ANALYSIS

*Disciplinary Case 83509/07*⁴

Specification No. 5

It is alleged that the Respondent was absent without leave from duty on October 16, 2007 and October 18, 2007, after being directed to report to work further to being denied requests for emergency excusal days.

⁴ The Specifications are being considered in chronological order rather than the order in which they appear in the charges.

Maddrey, the Commanding Officer of the 73 Precinct, testified that the Respondent was scheduled for duty on October 16, 2007 and October 18, 2007. On both of these days, the Respondent telephoned the precinct requesting emergency excusals. On both of these occasions, the Respondent's requests were denied and she was directed to appear for duty as scheduled. Notwithstanding this the Respondent failed to appear for duty on both occasions.

The Respondent was later questioned about these failures to report for duty. Her explanation was that she was attending to personal business with respect to litigation against the Department. This explanation is insufficient to justify a failure to report for duty. Clearly a visit to a lawyer's office can be scheduled for a time when the Respondent was free or other arrangements could have been made. This explanation on its face does not justify or mitigate the Respondent's two unauthorized absences. The Respondent is found guilty of Specification No. 5.

Specification Nos. 3 and 4

The Respondent is charged under Specification No. 3 with being absent without leave from her scheduled tour in that she failed to report to work as directed by a supervisor on November 19, 2007. The Respondent is further charged under Specification No. 4 with failing and neglecting to obey two subsequent orders on that day directing her to report to duty and denying her request for a tour change.

These two specifications essentially reflect multiple orders directing the Respondent to report for duty on her scheduled tour.

The Respondent was scheduled to perform duty with the second platoon, from 7:05 am to 3:40 pm, on November 19, 2007. Oberding, who was assigned as the desk

officer on that day during the second platoon, testified that he received two telephone calls from the Respondent. The first of which at 7:45 am was the Respondent informing him that she was running late, whereby he advised her that she was already late and that she needed to report to work as soon as possible. The second was a 12:50 pm request to perform duty on that day with the third platoon, from 3:00 pm to 11:35 pm, a request which was denied by Oberding.

Despite having been issued a directive at 7:45 am to appear at work and being denied a tour change thereafter, the Respondent took it upon herself to appear at the precinct at 3:00 pm. The Respondent was therefore absent from her scheduled tour of duty on November 19, 2007.

The fact that the Respondent showed up at 3:00 pm, the start of a new tour, is neither a defense nor mitigation. Her change of tour request, made after the start of her scheduled tour, had been denied. The Respondent is found guilty of Specification Nos. 3 and 4.

Specification Nos. 1 and 2

It is charged that the Respondent, while on duty on November 20, 2007, inside the 73 Precinct Station House did refuse the lawful orders of supervisory officers on two separate occasions. These specifications allege that she was ordered by Battle and DiPane to report to the Medical Division at 1 Lefrak City Plaza and that she failed to do so.

On this date, the Respondent was present in the 73 Precinct Station House after returning from Police Headquarters. It was established through the testimony of DiPane, the Integrity Control Officer of the Respondent's command, that at this time he issued the

Respondent an order to report to the Medical Division at 1 Lefrak City Plaza for the purpose of speaking to a Department doctor. In fact, DiPane indicated that in addition to ordering her to go he attempted to persuade her to go by informing her that it was in her own best interests to speak to the personnel at the Medical Division.

He also testified that Battle, the second platoon commander, also directed the Respondent to report to the Medical Division in his presence.

Despite being given the two orders to report to the Medical Division, the Respondent failed to do so. DiPane testified that the Respondent simply “kept refusing” and never reported to the Medical Division.

The Respondent is found guilty of Specification Nos. 1 & 2.

Disciplinary Case 83642/08

Specification No. 1

The Respondent is charged with refusing two orders on two separate occasions directing her appearance before the Department Advocate’s Office on December 21, 2007.

DiPane, the Integrity Control Officer of the Respondent’s command testified that he gave an order telephonically on December 20, 2007 to the Respondent to appear before the Department Advocate’s Office the following day, Friday, December 21, 2007 at 9:00 am.⁵ His testimony reflected that he clearly specified during this conversation that he was notifying the Respondent of her obligation to report the following day.

DiPane testified that the Respondent objected to appearing on December 21, 2007 in that it was her day of worship as a Seventh-day Adventist.

⁵ This Court takes official notice of the fact that December 21, 2007 was a Friday, see 38 RCNY 15-04 (f).

After hearing this testimony the Court directed that the Department bring in a witness or witnesses to address that issue.

Ahmed of the Department's Office of Equal Employment Opportunity stated that the Respondent does have a reasonable accommodation request on file with the Department and that she is excused from duty "sundown Friday through sundown Saturday." Therefore, the directive to appear on a Friday morning in this case is not in violation of the Respondent's religious accommodation nor apparently of her religious belief. Moreover, DiPane had communicated the Respondent's concerns to the Department Advocate's Office who had agreed to make sure the Respondent's visit was as expeditious as possible.

DiPane testified that he received a telephone call from the Department Advocate's Office informing him that the Respondent had failed to appear on December 21, 2007.

Consequently the Respondent is found guilty of Specification No. 1.

Specification No. 2

The Respondent is also charged with failing to comply with an additional order to appear on December 21, 2007 at the Department Advocate's Office.

On December 20, 2007, Wong of the Department Advocate's Office personally directed the Respondent to appear the following day, December 21 at 9:00 am. The Respondent was also provided with an official Department notification slip, offered into evidence, which she signed acknowledging the directive to appear the following day. That the Respondent signed the notification slip, which indicated that she was "hereby notified to appear," is clear evidence that she was well aware that she had been issued a directive to appear the following morning.

The specification involves the same failure to appear as the previous specification; however, the order to appear was given by a different officer, Wong. The record established, through the testimony of Wong, that the Respondent never appeared on December 21, 2007.

The Respondent is found guilty of Specification No. 2.

Disciplinary Case 84002/08

Specification No. 1

The Respondent is charged in this specification with failing to comply with the order of Maddrey to report to the Department Advocate's Office on March 17, 2008.

On March 14, 2008, Maddrey went to the Respondent's residence. He made contact with her and informed her that she needed to report to the Advocate's Office on the morning of March 17. In fact, he told the Respondent that she was "ordered to come to the Department Advocate" and that he repeated this directive twice in his interaction with her at her residence. Undoubtedly, the Respondent was given a direct order in this instance.

Testimony from Wong, that a check of the Department Advocate's Office sign in log for this date revealed no entries for the Respondent's name, confirmed her failure to appear.

The Respondent's non-appearance on March 17, 2008, compounded with her telephone call to Maddrey whereby she indicated that she would not be going despite the fact that he again told her to go, shows that the Respondent knowingly and intentionally failed to comply with a lawful order.

The Respondent is found guilty of Specification No. 1.

Disciplinary Case 84131/08

Specification No.1

The Respondent is charged with refusing to comply with an order to appear at the Department Advocate's Office on May 15, 2008.⁶

On May 9, 2008, which was one week before her scheduled appearance, the Respondent was personally given an order by Oliver to report to the Department Advocate's Office on May 15, 2008. The Respondent was also furnished with a written notification. It is clear that the Respondent accepted and understood the notification, as according to Oliver, she nodded her head upon being told of the impending appearance.

The record established that the Respondent failed to appear at the Department Advocate's Office on May 15, 2008, despite the fact that she was directed by an officer to do so. Oliver ascertained and testified to the Respondent's non-appearance, in addition to there being no entry in the Department Advocate's Office sign-in log for May 15, 2008 with respect to the Respondent's name.

The Respondent is found guilty of Specification No. 1.

Disciplinary Case 84290/08

Specification No.1

The Respondent is charged with refusing to comply with an order to appear at the Department Advocate's Office on June 12, 2008.⁷

⁶ The Court notes that the Respondent's scheduled appearance at the Department Advocate's Office was in connection with a conference on this case on that date.

⁷ The Court notes that the Respondent's scheduled appearance at the Department Advocate's Office was in connection with a conference on this case on that date.

Oliver approached the Respondent on the street as she left her residence in Brooklyn on May 16, 2008. He told her that she was required to appear at the Department Advocate's Office on June 12, 2008. She was told verbally and by means of a written notification. She accepted this written notification and nodded her head in assent.

The record established that the Respondent failed to appear on June 12, 2008 as ordered. Oliver, further to his duties, had been in communication with his supervisor and this office wherein he ascertained the Respondent's non-appearance. A check of the Department Advocate's Office sign in log also revealed no entries reflecting the Respondent's presence on this date.

Therefore, the Respondent is guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 22, 2002. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been charged with and found guilty of acts of misconduct related to her appearance for duty in this Department. She failed to appear for tours of duty as required, she failed to obey numerous orders and has failed to appear for trial or to communicate in any way with this tribunal. It would appear that she has abandoned

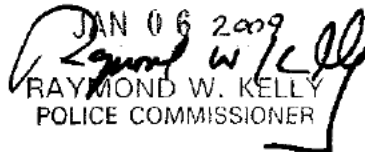
her position with this Department and therefore there is no alternative for the Department but to formally terminate her employment.

Based on the foregoing, this Court recommends that the Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner-Trials

APPROVED


JAN 06 2009
RAYMOND W. KELLY
POLICE COMMISSIONER